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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR



**CHURCH OF SCIENTOLOGY
INTERNATIONAL,**

Petitioner,

v.

**THE SUPERIOR COURT OF MARIN
COUNTY,**

Respondent;

GERALD ARMSTRONG,

Real Party in Interest.

A107095

(Marin County Super. Ct. Nos.
15229, 157680, CV021632)

In a petition for writ of certiorari, the Church of Scientology International (CSI) seeks an order compelling the trial court to reinstate sentences imposed upon Gerald Armstrong in earlier contempt proceedings. We grant the petition in part.

I. FACTUAL BACKGROUND

In December 1986, the parties entered into a settlement agreement under which CSI paid Armstrong, a former Church member, \$800,000 in exchange for his dismissal of claims against CSI. In addition, pursuant to paragraph 7.D. of the agreement, Armstrong agreed to maintain confidentiality concerning his experiences with CSI and not to publish orally or in writing any information about his experiences with or knowledge of CSI and its affiliated individuals and organizations. Paragraph 7.D. also contained a liquidated

damages provision under which Armstrong agreed that CSI was entitled to liquidated damages in the amount of \$50,000 for each breach of the agreement.¹

In February 1992, CSI filed a complaint against Armstrong alleging that he breached the settlement agreement by assisting counsel for other litigants against CSI and providing declarations in their cases describing his experiences with CSI. On October 17, 1995, the court granted CSI's motion for summary adjudication on four causes of action, concluding that Armstrong breached the settlement agreement entitling CSI to liquidated damages. The court found that Armstrong waived his First Amendment rights by signing the settlement agreement and rejected various challenges to the liquidated damages provision. The court also enjoined Armstrong from voluntarily assisting anyone other than a governmental entity engaged in litigation against CSI or defending a claim against it; facilitating the creation, publication, broadcast or writing of any work referring to CSI; or discussing CSI with anyone other than an immediate family member or his attorney. The court thereafter entered a judgment against Armstrong in the amount of \$321,923—\$300,000 in liquidated damages plus \$21,923 in interest. In addition, the

¹ Paragraph 7.D. provides in relevant part: "Plaintiff [Armstrong] agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing or to broadcast or to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. . . . Plaintiff agrees that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of \$50,000 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in a constructive trust pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages [is] hereto acknowledged by Plaintiff."

court awarded CSI costs of \$334,671.75.² This court dismissed Armstrong's appeal from that judgment.

On June 5, 1997, the court found Armstrong in contempt of its order enjoining him from assisting others in litigation against CSI. The court fined Armstrong \$1,000 and ordered that he be confined in the county jail for a period not to exceed 48 hours. Armstrong did not appear at the hearing in the contempt proceedings and did not file any opposition or evidence. The court entered a second order of contempt on February 20, 1998, finding that Armstrong violated the injunction in 13 separate incidents between September 2, 1997 and November 26, 1997, including disseminating a documentary work about CSI on the Internet. The court fined Armstrong \$200 for each violation for a total of \$2,600 and ordered that he be confined a total of 26 days in the county jail. Again, Armstrong failed to appear at the contempt proceedings. A third order to show cause re contempt proceeding was issued in December 2000. Armstrong filed an opposition to the court's order to show cause but did not appear at the hearing. In his opposition, Armstrong admitted that he had violated the injunction but argued that he signed the settlement agreement under duress and that the injunction was unlawful. Armstrong further averred that he was living in British Columbia, Canada. At the hearing on January 17, 2001, the court found that the injunction was valid and that Armstrong violated it by making 131 postings on the Internet violating one or more provisions of the injunction, that he spoke in violation of the order at a public gathering in Florida on December 5, 1999, and that he gave a radio interview on December 10, 1999 that violated the injunction. The court noted that there were two outstanding warrants for Armstrong which resulted from the two previous contempt proceedings and deferred imposition of punishment on the present contempt pending Armstrong's apprehension.

On April 2, 2002, CSI filed another action for breach of contract against Armstrong again seeking to recover liquidated damages for Armstrong's breaches of the settlement agreement. CSI alleged 201 breaches of paragraph 7.D. of the agreement

² It appears this judgment debt was never paid and, ultimately, was discharged in bankruptcy.

requiring Armstrong to maintain confidentiality about CSI and sought liquidated damages in the sum of \$10,050,000. Armstrong answered the complaint and admitted that he had breached paragraph 7.D. of the agreement more than 200 times. He alleged that the provisions of paragraph 7.D. of the agreement were illegal, unconstitutional and unenforceable and raised numerous affirmative defenses including unconscionability of the agreement and invalidity of the liquidated damages provision.

On April 9, 2004, the case was called for trial. At the outset, the court heard CSI's motion in limine to preclude Armstrong from introducing any evidence of defenses to the action on the grounds of collateral estoppel and res judicata. CSI argued that the 131 breaches of the agreement for which it sought recovery had already been determined to violate the agreement and the injunction. The court took the motion in limine under submission and the parties proceeded with opening statements.

After presentation of opening statements, the court granted the motion in limine, finding that 131 breaches of the agreement did occur, and that "these defenses" had been previously litigated. The court, however, found that it would be unconscionable to "punish" Armstrong with liquidated damages in excess of the \$800,000 he received as a benefit under the settlement agreement. Noting that Armstrong had previously been "sanctioned" in the sum of \$300,000, the court entered judgment for CSI in the amount of \$500,000.

During the course of the proceedings, the court, with the agreement of the parties, consolidated the sentencing hearing on the third contempt proceeding with the trial on CSI's current complaint. With respect to the contempt, the court discharged the previous bench warrants on the contempt citations of June 5, 1997 and February 20, 1998 and ordered that the jail time imposed on the citations be deemed served. On the third contempt citation, the court sentenced Armstrong to five days in jail and imposed a fine of \$1,000 which was ordered "concurrent with the judgment." The court further ordered that the jail time was deemed served by Armstrong's appearance in court.

II. DISCUSSION

CSI petitions for a writ of certiorari to address the court's order on the contempt proceedings against Armstrong.³ As CSI acknowledges, the court's order in the contempt proceedings is final and conclusive and is not an appealable order. (Code Civ. Proc., § 1222; *Butler v. Butler* (1967) 255 Cal.App.2d 132, 135-136.) The court's order, therefore, may be reviewed only upon certiorari if it is in excess of the court's jurisdiction. (*Taylor v. Superior Court* (1942) 20 Cal.2d 244, 246.) CSI has standing to seek such review. (*Id.* at p. 247 [since petitioner is person for whose protection the injunction was granted, he is a party beneficially interested in the ruling complained of within the meaning of Code Civ. Proc., § 1069].)

CSI is correct that the trial court had no jurisdiction to alter the sentences imposed in the first two contempt proceedings. “[J]udgments and orders of a court or judge made in cases of contempt are final and conclusive ([Code Civ. Proc.,] § 1222), and the court or judge retains no jurisdiction to alter a completed judicial act.” (*County of Lake v. Superior Court* (1977) 67 Cal.App.3d 815, 818.) Nor is there evidence to support Armstrong's claim that what occurred was actually a remission of punishment. No motion or request to remit was made at the hearing; the court merely announced its intention to “discharge the jail and the . . . contempt punishment[] with the entry of the judgment of \$500,000.” After brief arguments from counsel, the court issued its order that the contempts were “deemed served.” In any event, there were no circumstances in the record justifying a remission of the sentences. “In unusual cases, even though a contempt judgment is sustained, if the violation was the result of an honest mistake of law, *and compliance is ultimately obtained* [italics added], either the trial or appellate court may grant a remission of punishment [italics omitted].” (8 Witkin, Cal. Procedure (4th ed. 1997) Enforcement of Judgment, § 347, p. 355; see *City of Vernon v. Superior Court* (1952) 39 Cal.2d 839, 842-843.) Although Armstrong offers many arguments to support his position his sentences should have been remitted—for example, that his

³ CSI appealed from the judgment for liquidated damages but subsequently moved to dismiss the appeal. We granted the motion.

violations of the agreement were expressions of his religious beliefs—he has not argued or shown that in violating the injunction he operated under an honest mistake of law. And, Armstrong makes no claim that he has complied, or will ever comply, with the injunction. Indeed, he repeated at oral argument his position that compliance is “literally impossible.” We conclude therefore that the court’s judgment here discharging the bench warrants on the contempt citations of June 5, 1997 and February 20, 1998 and deeming the sentences served was in error.

Armstrong makes several arguments challenging the validity of the contempt orders. He contends that the first contempt order was improper because he was within his rights to submit a declaration in a CSI litigation matter despite the contract prohibiting him from doing so because he was reporting a crime to the court. He urges that the second and third contempt orders violate his First Amendment right to the free exercise of his religion. Armstrong, however, is foreclosed from challenging the merits of the contempt orders in this writ proceeding.⁴ The contempt orders are final. (Code Civ. Proc., § 1222.)

CSI asserts that the court erred in its sentencing of Armstrong on the third contempt citation. The court sentenced Armstrong to five days in jail and fined him \$1,000 concurrent with the judgment in the breach of contract action. The court deemed the jail time served by Armstrong’s appearance in court. While the court had the discretion to determine the sentence on the basis of the evidence and within the scope of Code of Civil Procedure section 1218 (see 6 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Criminal Judgment, § 155, p. 183), its linking of the compensatory damages of the contract action with the contempt fine was in error (see *In re Wales* (1957) 153 Cal.App.2d 117, 119 [“a contempt proceeding is not a civil action, either at law or in equity, but is a separate proceeding of a criminal nature [citations] notwithstanding the recognized practice to prosecute the contempt in the cause or proceeding out of which it

⁴ As CSI points out, Armstrong did not seek review of the trial court’s ruling on the validity of the injunction or the court’s determination that his defenses had been previously litigated.

arose”]; *Bailey v. Superior Court* (1956) 142 Cal.App.2d 47, 54 [court erred in awarding compensatory damages in contempt action]). The court simply had no authority to order the fine in the contempt proceeding “concurrent” with the judgment in the civil action.

III. DISPOSITION

The petition for writ of certiorari is granted in part. The trial court is directed to reinstate the sentences previously imposed on Armstrong for the contempt citations of June 5, 1997 and February 20, 1998 and to reinstate the fine on the third contempt citation. The parties are to bear their own costs.

RIVERA, J.

We concur:

SEPULVEDA, Acting P. J.

MUNTER, J.*

* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.